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PROTECTIVE LIFE INSURANCE COMPANY and EMPIRE GENERAL LIFE
INSURANCE COMPANY

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BEVERLY ALLEN, Individually, and
on Behalf of the Class,

Plaintiff,

v.

PROTECTIVE LIFE INSURANCE
COMPANY, a Tennessee Corporation;
EMPIRE GENERAL LIFE
INSURANCE COMPANY, an
Alabama Corporation,

Defendants.

Case No.: 1:20-cv-00530-NONE-JLT

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER
(Doc. 10)**

1 **1. PURPOSES AND LIMITATIONS**

2 Discovery in this action may involve production of confidential, proprietary,
3 or private information for which special protection from public disclosure and from
4 use for any purpose other than pursuing this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order
7 does not confer blanket protections on all disclosures or responses to discovery and
8 that the protection it affords from public disclosure and use extends only to the
9 limited information or items that are entitled to confidential treatment under the
10 applicable legal principles.

11 **2. GOOD CAUSE STATEMENT**

12 This action may involve private personal information related to life
13 insurance and life insurance applications, including, potentially, health and
14 financial information, as well as Defendants' proprietary business practices and
15 procedures for which protection from public disclosure and from use for any
16 purpose other than prosecution of this Action is warranted. Accordingly, to
17 expedite the flow of information, to facilitate the prompt resolution of disputes
18 over confidentiality of discovery materials, to adequately protect information the
19 parties are entitled to keep confidential, to ensure that the parties are permitted
20 reasonable necessary uses of such material in preparation for and in the conduct of
21 trial, to address their handling at the end of the litigation, and serve the ends of
22 justice, a protective order for such information is justified in this matter.

23 **3. ACKNOWLEDGMENT OF UNDER SEAL FILING PROCEDURE**

24 The parties further acknowledge, as set forth in Section 14.3, below, that this
25 Stipulated Protective Order does not entitle them to file confidential information
26 under seal; Local Civil Rules 140 and 141 set forth the procedures that must be
27 followed and the standards that will be applied when a party seeks permission from
28 the court to file material under seal.

Any document that is not confidential, privileged, or otherwise protectable in its entirety will not be filed under seal if the confidential portions can be redacted. If documents can be redacted, then a redacted version for public viewing, omitting only the confidential, privileged, or otherwise protectable portions of the document, shall be filed. Any application that seeks to file documents under seal in their entirety should include an explanation of why redaction is not feasible, and any redacted documents must be filed with an application to file documents under seal as required by Local Rules, unless otherwise specified in such rules. The Parties must specifically comply with the requirements of Local Rule 140, which provides for the redaction of minors' names, financial account numbers, Social Security numbers, dates of birth, and when federal law requires redaction. Local Rule 140(a).

4. DEFINITIONS

4.1 Action: the above-captioned pending federal lawsuit.

4.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

4.3 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

4.4 Counsel (without qualifier): Outside Counsel of Record and House Counsel and their support staff.

4.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

4.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced

1 or generated in disclosures or responses to discovery in this Action.

2 4.7 Expert: a person with specialized knowledge or experience in a matter
3 pertinent to the litigation who has been retained by a Party or its counsel to serve
4 as an expert witness or as a consultant in this Action.

5 4.8 House Counsel: attorneys who are employees of a party to this Action.
6 House Counsel does not include Outside Counsel of Record or any other outside
7 counsel.

8 4.9 Non-Party: any natural person, partnership, corporation, association or
9 other legal entity not named as a Party to this action.

10 4.10 Outside Counsel of Record: attorneys who are not employees of a
11 party to this Action but are retained to represent or advise a party to this Action
12 and have appeared in this Action on behalf of that party or are affiliated with a law
13 firm that has appeared on behalf of that party, and includes any and all support
14 staff.

15 4.11 Party: any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 4.13 Professional Vendors: persons or entities that provide litigation
21 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 4.14 Protected Material: any Disclosure or Discovery Material that is
25 designated as "CONFIDENTIAL." Protected Material includes Sensitive Personal
26 Information.

27 4.15 Receiving Party: a Party that receives Disclosure or Discovery
28 Material from a Producing Party.

1 4.16 Sensitive Personal Information: a person's Social Security number;
2 taxpayer identification number; date of birth (other than year); home address;
3 driver's license number or other state identification number (or a foreign country
4 equivalent); passport number; student loan amount when associated with other
5 identifying information; personal financial information, such as bank account,
6 credit card, or debit card number(s); and medical records or other information
7 relating to the person's treatment of physical or mental health or condition or to the
8 provision of or payment for health care to the person.

9 **5. SCOPE**

10 The protections conferred by this Stipulation and Order cover not only
11 Protected Material (as defined above), but also (1) any information copied or
12 extracted from Protected Material; (2) all copies, excerpts, summaries, or
13 compilations of Protected Material; and (3) any testimony, conversations, or
14 presentations by Parties or their Counsel that might reveal Protected Material.

15 Any use of Protected Material at trial shall be governed by the orders of the
16 trial judge and other applicable authorities. This Order does not govern the use of
17 Protected Material at trial. Use of Protected Material at trial shall be governed by a
18 separate agreement or order, if applicable.

19 **6. DURATION**

20 Unless otherwise stated herein, even after final disposition of this litigation,
21 the confidentiality obligations imposed by this Order shall remain in effect until a
22 Designating Party agrees otherwise in writing or a court order otherwise directs.
23 Final disposition shall be deemed to be the later of (1) dismissal of all claims and
24 defenses in this action, with or without prejudice; and (2) final judgment herein
25 after the completion and exhaustion of all appeals, rehearings, remands, trials, or
26 reviews of this action, including the time limits for filing any motions or
27 applications for extension of time pursuant to applicable law.
28

1 **7. DESIGNATING PROTECTED MATERIAL**

2 7.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection under
4 this Order must take care to limit any such designation to specific material that
5 qualifies under the appropriate standards.

6 The Designating Party must designate for protection only those parts of
7 material, documents, items or oral or written communications that qualify so that
8 other portions of the material, documents, items or communications for which
9 protection is not warranted are not swept unjustifiably within the ambit of this
10 Order.

11 Mass, indiscriminate, or routinized designations are prohibited. Designations
12 that are shown to be clearly unjustified or that have been made for an improper
13 purpose (e.g., to unnecessarily encumber the case development process or to
14 impose unnecessary expenses and burdens on other parties) may expose the
15 Designating Party to sanctions.

16 If it comes to a Designating Party's attention that information or items that it
17 designated for protection do not qualify for protection, that Designating Party must
18 promptly notify all other Parties that it is withdrawing the inapplicable or mistaken
19 designation.

20 7.2 Manner and Timing of Designations. Except as otherwise provided in
21 this Order, or as otherwise stipulated or ordered, Disclosure of Discovery Material
22 that qualifies for protection under this Order must be clearly so designated before
23 the material is disclosed or produced.

24 Designation in conformity with this Order requires:

- 25 (a) for information in documentary form (e.g., paper or electronic
26 documents, but excluding transcripts of depositions or other pretrial or
27 trial proceedings), that the Producing Party affixes at a minimum, the
28 legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"),

1 to each page that contains protected material. If only a portion of the
2 material on a page qualifies for protection, the Producing Party also
3 must clearly identify the protected portion(s) (e.g., by making
4 appropriate markings in the margins).

5 A Party or Non-Party that makes original documents or
6 materials available for inspection need not designate them for
7 protection until after the inspecting Party has indicated which
8 documents or materials it would like copied and produced. During the
9 inspection and before the designation, all of the material made
10 available for inspection shall be deemed "CONFIDENTIAL." After
11 the inspecting Party has identified the documents it wants copied and
12 produced, the Producing Party must determine which documents, or
13 portions thereof, qualify for protection under this Order. Then, before
14 producing the specified documents, the Producing Party must affix the
15 "CONFIDENTIAL legend" to each page that contains Protected
16 Material. If only a portion of the material on a page qualifies for
17 protection, the Producing Party also must clearly identify the
18 protected portion(s) (e.g., by making appropriate markings in the
19 margins). If the Discovery Material cannot readily be marked as
20 CONFIDENTIAL (such as an Excel file), CONFIDENTIAL may be
21 used as part of the name of the file.

22 (b) for testimony given in depositions or in other pretrial proceedings,
23 that the Designating Party identifies the Protected Material in writing
24 sent to all parties no later than thirty days after receipt of the certified
25 transcript.

26 (c) for information produced in some form other than documentary and
27 for any other tangible items, that the Producing Party affix in a
28 prominent place on the exterior of the container or containers in which

1 the information is stored the legend “CONFIDENTIAL.” If only a
2 portion or portions of the information warrants protection, the
3 Producing Party, to the extent practicable, shall identify the protected
4 portion(s).

5 7.3 Inadvertent Failures to Designate. An inadvertent failure to designate
6 qualified information or items does not, standing alone, waive the Designating
7 Party’s right to secure protection under this Order for such material. Upon a
8 request for correction of a designation, the Receiving Party must make reasonable
9 efforts to assure that the material is treated in accordance with the provisions of
10 this Order.

11 **8. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 8.1 Timing of Challenges. Any Party or Non-Party may challenge a
13 designation of confidentiality at any time that is consistent with the Court’s
14 Scheduling Order and as set forth herein.

15 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process by providing written notice of each designation it is challenging
17 and describing the basis for each challenge. To avoid ambiguity as to whether a
18 challenge has been made, the written notice must recite that the challenge to
19 confidentiality is being made in accordance with this specific paragraph of the
20 Protective Order. The Parties shall attempt to resolve each challenge in good faith
21 and must begin the process by conferring directly (in voice to voice dialogue; other
22 forms of communication are not sufficient) within 14 days of the date of service of
23 notice. In conferring, the Challenging Party must explain the basis for its belief
24 that the confidentiality designation was not proper and must give the Designating
25 Party an opportunity to review the designated material and to reconsider the
26 circumstances. If no change in designation is offered, the Designating Party must
27 explain the basis for the chosen designation. A Challenging Party may proceed to
28 the next stage of the challenge process only if it has engaged in this meet and

1 confer process first or establishes that the Designating Party is unwilling to
2 participate in the meet and confer process in a timely manner.

3 8.3 Court Intervention. If the Parties cannot resolve a challenge without
4 court intervention, the Challenging Party shall file and serve a motion to remove
5 confidentiality under Eastern District Local Rule 230 and 251 (and in compliance
6 with Eastern District Local Rules 141 and 141.1, if applicable) within 30 days of
7 the initial notice of challenge or within 14 days of the Parties agreeing that the
8 meet and confer process will not resolve their dispute, whichever date is earlier,
9 unless the parties agree in writing to a longer time. In addition, the Challenging
10 Party may file a motion challenging a confidentiality designation beyond the
11 designated period described above if there is good cause for the delay. Any motion
12 brought pursuant to this provision must be accompanied by a competent
13 declaration affirming that the movant has complied with the meet and confer
14 requirements imposed by the preceding paragraph.

15 The burden of persuasion in any such challenge proceeding shall be on the
16 Designating Party. All Parties shall continue to afford the material in question the
17 level of protection to which it is entitled under the Producing Party's designation
18 until the court rules on the challenge. Frivolous challenges, and those made for an
19 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
20 other parties) may expose the Challenging Party to sanctions, as will frivolous
21 designations.

22 **9. ACCESS TO AND USE OF PROTECTED MATERIAL**

23 9.1 Basic Principles. A Receiving Party may use Protected Material that is
24 disclosed or produced by another Party or by a Non-Party in connection with this
25 Action only for prosecuting, defending or attempting to settle this Action. Such
26 Protected Material may be disclosed only to the categories of persons and under
27 the conditions described in this Order. When the Action has been terminated, a
28

1 Receiving Party must comply with the provisions of section 15 below (FINAL
2 DISPOSITION).

3 Protected Material, including Sensitive Personal Information, must be stored
4 and maintained by a Receiving Party at a location and in a secure manner that
5 ensures that access is limited to the persons authorized under this Order.

6 9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
7 otherwise ordered by the court or permitted in writing by the Designating Party, a
8 Receiving Party may disclose any information or item designated
9 “CONFIDENTIAL” only to:

- 10 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
11 well as employees of said Outside Counsel of Record to whom it is
12 reasonably necessary to disclose the information for this Action;
- 13 (b) the officers, directors, and employees (including House Counsel) of
14 the Receiving Party to whom disclosure is reasonably necessary for
15 this Action;
- 16 (c) Experts (as defined herein) of the Receiving Party to whom disclosure
17 is reasonably necessary for this Action and who have signed the
18 “Acknowledgment and Agreement to Be Bound” attached hereto as
19 **Exhibit A**;
- 20 (d) the court and its personnel;
- 21 (e) court reporters and their staff;
- 22 (f) professional jury or trial consultants, mock jurors, and professional
23 vendors to whom disclosure is reasonably necessary for this Action
24 and who have signed the “Acknowledgment and Agreement to Be
25 Bound” attached hereto as **Exhibit A**;
- 26 (g) the author or recipient of a document containing the information or a
27 custodian or other person who otherwise possessed or knew the
28 information;

- 1 (h) during their depositions, witnesses, and attorneys for witnesses, in the
 2 Action to whom disclosure is reasonably necessary provided: (1) the
 3 witness and his/her attorneys sign the “Acknowledgment and
 4 Agreement to Be Bound” attached hereto as **Exhibit A**; and (2) they
 5 will not be permitted to keep any Protected Material or confidential
 6 information, unless otherwise agreed by the Designating Party or
 7 ordered by the court. Pages of transcribed deposition testimony or
 8 exhibits to depositions that reveal Protected Material may be
 9 separately bound by the court reporter and may not be disclosed to
 10 anyone except as permitted under this Stipulated Protective Order;
 11 and
- 12 (i) any mediators or settlement officers and their supporting personnel,
 13 mutually agreed upon by any of the Parties engaged in settlement
 14 discussions.

15 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
 16 **PRODUCED IN OTHER LITIGATION**

17 If a Party is served with a subpoena or a court order issued in other litigation
 18 that compels disclosure of any information or items designated in this Action as
 19 “CONFIDENTIAL,” that Party must:

- 20 (a) promptly notify in writing the Designating Party. Such notification
 21 shall include a copy of the subpoena or court order;
- 22 (b) promptly notify in writing the party who caused the subpoena or order
 23 to issue in the other litigation that some or all of the material covered
 24 by the subpoena or order is subject to this Protective Order. Such
 25 notification shall include a copy of this Stipulated Protective Order;
 26 and

- 1 (c) cooperate with respect to all reasonable procedures sought to be
 2 pursued by the Designating Party whose Protected Material may be
 3 affected.

4 If the Designating Party timely seeks a protective order, the Party served with the
 5 subpoena or court order shall not produce any information designated in this action
 6 as “CONFIDENTIAL” before a determination by the court from which the
 7 subpoena or order issued, unless the Party has obtained the Designating Party’s
 8 permission. The Designating Party shall bear the burden and expense of seeking
 9 protection in that court of its confidential material and nothing in these provisions
 10 should be construed as authorizing or encouraging a Receiving Party in this Action
 11 to disobey a lawful directive from another court.

12 **11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
 13 **PRODUCED IN THIS LITIGATION**

14 (a) The terms of this Order are applicable to information produced by a
 15 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
 16 produced by Non-Parties in connection with this Action is protected by the
 17 remedies and relief provided by this Order. Nothing in these provisions should be
 18 construed as prohibiting a Non-Party from seeking additional protections.

19 (b) In the event that a Party is required, by a valid discovery request, to
 20 produce a Non-Party’s confidential information in its possession, and the Party is
 21 subject to an agreement with the Non-Party not to produce the Non-Party’s
 22 confidential information, then the Party shall:

- 23 (1) promptly notify in writing the Requesting Party and the Non-
 24 Party that some or all of the information requested is subject to
 25 a confidentiality agreement with a Non-Party;
 26 (2) promptly provide the Non-Party with a copy of the Stipulated
 27 Protective Order in this Action, the relevant discovery
 28

request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" attached hereto as **Exhibit A**.

13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify

1 whatever procedure may be established in an e-discovery order that provides for
2 production without prior privilege review. Pursuant to Federal Rule of Evidence
3 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
4 of a communication or information covered by the attorney-client privilege or
5 work product protection, the parties may incorporate their agreement in the
6 stipulated protective order submitted to the court.

7 **14. MISCELLANEOUS**

8 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
9 person to seek its modification by the court in the future.

10 14.2 Right to Assert Other Objections. By stipulating to the entry of this
11 Protective Order, no Party waives any right it otherwise would have to object to
12 disclosing or producing any information or item on any ground not addressed in
13 this Stipulated Protective Order. Similarly, no Party waives any right to object on
14 any ground to use in evidence of any of the material covered by this Protective
15 Order.

16 14.3 Filing Protected Material. A Party that seeks to file under seal any
17 Protected Material must comply with the Local Civil Rules and any
18 chambers/departmental rules of this Court. Absent written permission from the
19 Designating Party or a court order secured after appropriate notice to all interested
20 persons, Protected Material may only be filed under seal pursuant to a court order
21 authorizing the sealing of the specific Protected Material. If a Party's request to file
22 Protected Material under seal is denied by the court, then the Receiving Party may
23 file the information in the public record pursuant to the Local Civil Rules unless
24 otherwise instructed by the court.

25 **15. FINAL DISPOSITION**

26 After the final disposition of this Action, as defined in paragraph 6, within
27 60 days of a written request by the Designating Party, each Receiving Party must
28 return all Protected Material to the Producing Party or destroy such material. As

used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party, must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 6 (DURATION).

16. VIOLATION

Any violation of this Order may be punished by appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Respectfully submitted:
DATED: June 18, 2020

NICHOLAS & TOMASEVIC, LLP

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Attorneys for Plaintiff

1 DATED: June 18, 2020

MAYNARD, COOPER & GALE, LLP

2
3 By: /s/ Nicholas Boos
4 *As authorized on June 17, 2020*
5 *(Local Rule 131(e))*
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Attorneys for Defendants

9 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

10 IT IS SO ORDERED.

11 Dated: **June 18, 2020**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Eastern District of California
on [date] in the case of *Beverly Allen v. Protective Life Insurance Company, et. al*,
Case No. 1:20-cv-00530-NONE-JLT. I agree to comply with and to be bound by all
the terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any information
or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Eastern District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

Signature: _____

Printed name: _____